

NBC Universal recently announced the sale of its owned and operated station in South Florida, WTVJ-NBC6, to the Post-Newsweek, a subsidiary of the Washington Post Company, owners of WTVJ's main competitor, WPLG Channel 10. The deal is pending FCC approval, and here's why it should not be approved:

1. BAD FOR THE PUBLIC

Eliminating competition between two historically fierce, rival news organizations means the public no longer receives the benefits of that competition: the desire and means to break stories the other station doesn't have and the ability to see a radically different mix of stories and points of view; broad coverage of the community's issues and interests is greatly diminished. On any given day, the two stations produce many stories of great interest to South Florida, stories unique to each station.

Where once the public had two, with this merger, the public essentially gets one news organization, one voice, which is controlled by one corporation.

2. QUESTIONABLE LEGALITY

Anyone who reads the text of the FCC rule that makes this merger possible can see it was not intended to be used like this, in this market.

Here's the background, in brief: The rule, drafted before the rise to prominence of Spanish-language TV in this country, is that an owner of a number one rated station cannot buy another top-four station in the same market, as measured by Nielsen ratings from sign-on to sign-off. WPLG is currently number one. WTVJ has always been in the top four of English-language stations. But recently, Nielsen discontinued the Spanish Ratings Index and started including Spanish-language stations in the overall ratings. This had the effect, because of NBC's weak, current prime-time lineup, of dropping WTVJ's overall rating to sixth in the market, behind Spanish-language Channels 23 and 51.

But this is a temporary, fluid situation! In fact, according to the filing presented to the FCC by NBC and Post-Newsweek, the companies are using only one ratings period, which is one month, to make this determination.

It also appears the companies are cherry-picking a time period

that allows them to make this deal. They're not citing sign-on to sign-off. They're using WTVJ's 9 AM to Midnight ratings only. This conveniently eliminates from consideration WTVJ's highly rated morning news program, the highly ranked first two hours of NBC's Today Show, the second half of Jay Leno's Tonight Show and Late Night with Conan O'Brien.

Why do some lawyers say the rule wasn't intended to be used like this? Because they believe the intent of the FCC was to PREVENT a top-four English language Network Station, NBC, CBS, ABC or FOX, from owning another station in the same market.

The rule makes no mention of Spanish-language stations. Clearly, for this purpose, Spanish-language and English-language stations should not be included in the same ratings sample.

There are many possible flaws in the sampling, from where the meters are placed: an abundance in Hialeah would favor Spanish stations; an abundance in Miami Shores or Davie would favor English; to the daily roller coaster-like fluctuations in the ratings. As this is being written, WTVJ is third overall in ratings and is likely to be FIRST during the upcoming Olympics.

Additionally, WTVJ'S locally produced news programs are consistently in the top four or higher. How can it be said that WTVJ is number SIX (and that the merger is legal) when ratings are so fluid and change so often?

If Channels 23 and 51 were not included, the merger could not happen. Interestingly, Miami-Fort Lauderdale is one of the only markets where this phenomenon of highly rated Spanish TV is so strong.

The FCC certainly didn't draft a rule with only South Florida in mind. Obviously, this is a loophole that NBC and Post-Newsweek are trying to exploit, at great cost to the viewing public.

3. JOB LOSS

Depending on the amount of consolidation Post-Newsweek implements, this merger could result in the loss of nearly 200 well-paying jobs. They could decide, in the worst-case scenario, to eliminate most or all of WTVJ's news and production staff, and simply simulcast one newscast on both channels. Even if they decide on keeping two separate news identities, there would still be massive streamlining, resulting in the loss of dozens of jobs.

4. FAIRNESS TO OTHER STATIONS

Under the merger, the same company would own the number one, two, three, or four English-language stations, depending on the time period on any given day. That means advertisers could go to one place and corner anywhere from 40 to 60 percent of the English-language market, making business very difficult for the other stations serving South Florida.